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June 3, 2008

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Notice of Ex Parte Presentation*: In the Matter of Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas, WC Docket No. 07-97

REDACTED FOR PUBLIC INSPECTION

Dear Ms. Dortch:

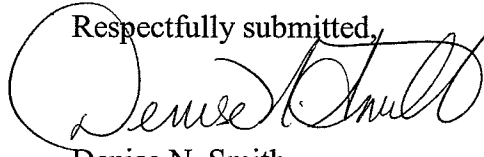
Yesterday, Heather Gold, Lisa Youngers, and Rex Knowles of XO Communications, LLC ("XO"), Brad Mutschelknaus of Kelley Drye & Warren, LLP and Kevin Joseph (collectively "XO and Kelley Drye"), met with Daniel Gonzalez, Chief of Staff to Chairman Kevin J. Martin, Dana Schaeffer, Chief of the Wireline Competition Bureau and Amy Bender, Legal Advisor to Chairman Kevin J. Martin. During that meeting XO and Kelley Drye presented information addressing the steps that must be met before forbearance is justified and showing that forbearance is not warranted for Qwest Corporation. Attached to this *Notice of Ex Parte Presentation*, is a redacted version of the presentation provided at the meeting.

In accordance with paragraph 14 of the *Second Protective Order*, dated June 1, 2007 (DA 07-2293) in the above-captioned proceeding, a copy of the presentation, containing Highly Confidential information is being submitted to your attention under separate cover.

Kindly date stamp the duplicate of this letter and return it to the courier. Please contact the undersigned at (202) 342-8614, if you have any questions about this letter.

KELLEY DRYE & WARREN LLP

Ms. Marlene H. Dortch
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Respectfully submitted,

Denise N. Smith

Enclosures



PETITIONS OF QWEST CORPORATION FOR FORBEARANCE IN THE DENVER, MINNEAPOLIS-ST.PAUL, PHOENIX AND SEATTLE MSAs



XO Communications, LLC
June 2, 2008

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Section 251(c) Forbearance Framework

◆ Step 1

– Qwest must show *successful competition* in the aggregate in each MSA

- Competition must be evaluated separately for each relevant product market
 - New vigor in analyzing the mass market and enterprise market separately is warranted
 - McLeod has withdrawn from Omaha; no reasonable Qwest commercial UNE replacement deal available
- Competition must be facilities-based
- QPP, resale, UNE, special access, and over-the-top VoIP lines do not qualify

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Section 251(c) Forbearance Framework

- ◆ Step 1 (cont'd)
 - Must be more than one *facilities-based* competitor
 - The duopoly that would result if only one facilities-based competitor would be contrary to the public interest
 - Facilities-based competitors must be providing substitutable services in the relevant product market

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Section 251(c) Forbearance Framework

- ◆ Step 2
 - If the Step 1 analysis meets the established threshold, a more granular analysis must be conducted
 - For each product market, *competitors' facilities-based coverage* by wire center must be ascertained
 - Facilities must be able to be used to provide substitutable services in the relevant product market within a commercially reasonable period of time

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Section 251(c) Forbearance Framework

- ◆ Step 3
 - For each wire center that meets the coverage threshold (*i.e.*, 75%), the level of actual facilities-based competition in that wire center must be ascertained

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Qwest Has Not Established That Sufficient Competition Exists In Any Product Market

- ◆ Qwest has not produced product market specific data
 - Data for the *enterprise market* consists of a single survey estimating Qwest's "revenue share"
 - Relies on anecdotal material
 - Unlike *Omaha*, this record has specific data showing insignificant competitive market share of enterprise customers
 - Data for the *mass market* addresses only a subset of the market
 - Residential only; small business ignored

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The Residential Market Data Produced By Qwest Is Fundamentally Flawed

- ◆ Qwest erroneously includes non facilities-based lines (*i.e.*, QPP and resale) in its analysis
- ◆ Qwest admits its data are only estimates that cannot substitute for actual line count data
 - Concedes that actual cable data is required both for accurate market share and coverage test calculations

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The Residential Market Data Produced By Qwest Is Fundamentally Flawed (Cont'd)

- Wireless lines should be excluded from the analysis
 - Wireless lines today are not a complete substitute for wireline services in any product market
 - Most households do not regard wireline and wireless to be direct substitutes (*Order*, CC Docket 96-45, ¶21, May 1, 2008)
 - Mikkelsen/Economists, Inc. paper establishes that wireline and wireless constitute separate product markets
- If wireless lines are included, inclusion must be limited to the residential voice (narrowband) market
 - No evidence of significant displacement in enterprise and broadband markets

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The Residential Market Data Produced By Qwest Is Fundamentally Flawed (Cont'd)

- ◆ Wireless data used by the Commission must be from a neutral third party
 - If CDC Survey is used, adjustments must be made
 - Adjustments to the CDC Survey results suggested in Gillan Associates paper must be adopted
 - Use of the lower bound of the 95% confidence interval
 - Identifiable groups that are not representative of the population as a whole should be excluded
 - College-age respondents should be excluded
 - Telephia survey is not a reliable source

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Actual Facilities-Based Penetration In The Enterprise Market Is, At Best, Very Modest

- ◆ An aggregate market share for the enterprise market must be ascertained
- ◆ GeoResults is a neutral source for data on the extent of facilities-based competition in the enterprise market
- ◆ GeoResults data for the 4 MSAs at issue has been obtained by the competitors
- ◆ XO has filed its own facilities penetration data, which confirms the GeoResults industry-wide analysis

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XO's Current Facilities-Based Lit Commercial Building Market Penetration [BEGIN HIGHLY CONFIDENTIAL]



[END HIGHLY CONFIDENTIAL]

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All CLECs Combined Connect with Their Own Facilities to a Minor Portion of Commercial Buildings in the Affected MSAs

MSA	Total Number of Commercial Buildings in MSA	% of Commercial Buildings Served by Facilities-Based CLECs
Denver	104,385	0.24%
Minneapolis/ St.Paul	124,740	0.26%
Phoenix	127,763	0.17%
Seattle	127,880	0.18%

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Even in the Most Competitive Wire Centers, All CLECs Combined Connect with Their Own Facilities to Very Few Commercial Buildings

MSA	Wire Center with Highest Percentage of Commercial Buildings Served by Facilities-Based CLECs	Total Number of Commercial Buildings in Wire Center	Percentage of Commercial Buildings Served by Facilities-Based CLECs
Denver	ENWDCOMA	2433	2.28%
Minneapolis/ St.Paul	MPLSMNDT	1574	3.63%
Phoenix	PHNXAZSE	1095	1.46%
Seattle	STTLWAEL	666	3.15%

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No Commercial Building is Connected to CLEC Facilities in Approximately One-Half of Affected Wire Centers

MSA	Total Number of Wire Centers in MSA	Total Number of Wire Centers with no Buildings Served by Facilities-Based CLEC	Percentage of Wire Centers with no Buildings Served by Facilities-Based CLECs
Denver	47	20	43%
Minneapolis/ St.Paul	140	84	60%
Phoenix	76	39	51%
Seattle	69	30	43%

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All CLECs Combined Seldom Can Serve More Than 5% of the Affected Commercial Market Over Their Own Facilities

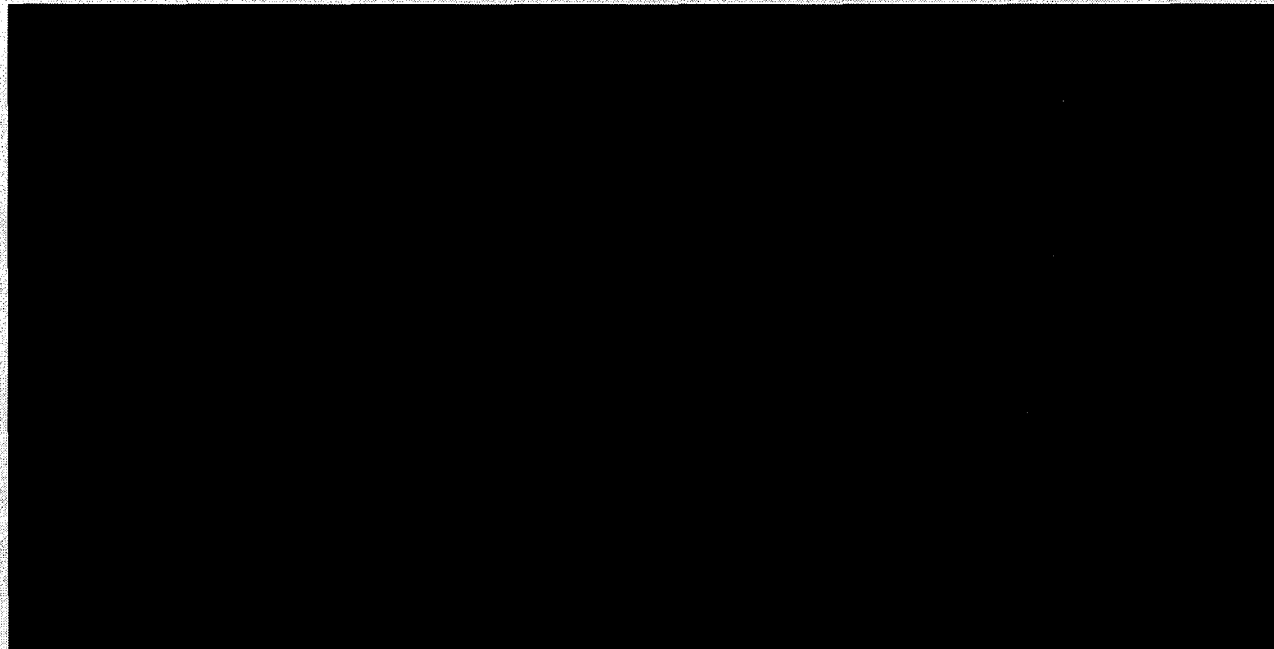
MSA	Number of Wire Centers in MSA with Facilities-Based CLEC Addressable Demand Market Share Between 0%-5%	Number of Wire Centers in MSA with Facilities-Based CLEC Addressable Demand Market Share Between 5%-10%	Number of Wire Centers in MSA with Facilities-Based CLEC Addressable Demand Market Share Between 10%-15%	Number of Wire Centers in MSA with Facilities-Based CLEC Addressable Demand Market Share Above 15%
Denver	41	3	3	0
Minneapolis/ St.Paul	133	6	1	0
Phoenix	72	4	0	0
Seattle	66	2	1	0

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Most Commercial Buildings are Too Distant from CLEC Fiber Backbone Networks to Justify Construction of Laterals

[BEGIN HIGHLY CONFIDENTIAL]



[END HIGHLY CONFIDENTIAL]

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Actual Facilities-Based Penetration In The Enterprise Market Is, At Best, Very Modest

- ◆ Qwest “fiber network” data does not show facilities-based competition in the enterprise market
 - Qwest fails to identify:
 - The fiber providers
 - Whether (and to what extent) the fiber is being used to provide telecom services
 - Whether the networks can support the full range of services within a commercially reasonable time
- Qwest fails to acknowledge that passing a location does not necessarily mean the owner can provide service at that location

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Qwest Has Failed To Prove That Successful Competition Exists In Any MSA

- ◆ State regulators uniformly have stated that facilities-based competition in Arizona, Colorado, Minnesota and Washington is not sufficiently robust to justify UNE forbearance
- ◆ Because Qwest has failed to show that successful competition exists at the aggregate (*i.e.*, MSA) level in any product market, its petitions must be denied

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